

**OPEGA Summary of the
US Department of Labor Letter Regarding Its Fact Finding Review of
The First Level Appeals Component of Maine's Unemployment Compensation Program**

The US Department of Labor (DOL) conducted a fact-finding review on the first-level appeals component of the Maine's Unemployment Compensation (UC) program as prompted by a combination of factors including public concerns about possible political interference in the state's UC appeals process. This review included a case file review of appeal records and a series of interviews and document reviews.

DOL's review suggests there are legitimate concerns about practices in Maine's first-level appeal hearings and important questions about how and whether those practices—including certain evidentiary standards and the failure to assign precedential value to second-level appeal decisions—comply with federal US fair hearing requirements.

Additionally, evidence suggests that, even before the Governor's direct participation on March 21st, political appointees in MDOL had intervened in Division of Administrative Hearings (DAH) operations and quasi-judicial decision-making and that those actions could be perceived as a bias toward employers, endangering the fair hearings process. The review concludes that hearing officers could have interpreted the expectations communicated by the Governor on March 21st as a pressure to be more sympathetic to employers.

While the case review yielded no statistical evidence to indicate the meeting of March 21st had an immediate impact on decision-making by Maine DAH appeals hearing officers, the review, coupled with information from interviews, suggests reason for concern and warrants continued attention from US DOL. In addition to closely monitoring Maine's performance based on established Federal standards for Timeliness, Case Aging, and Quality, the Regional Office will also follow up with quarterly case review to monitor and ensure the ongoing impartiality of the hearing process.

To address the concerns expressed in this fact-finding and to ensure the integrity of an impartial hearings process, DOL encouraged the State to take the following steps:

- Maine should review state statutes, regulations and practices and consider some of the more generous evidentiary UC appeals practices suggested in the Guide to Unemployment Insurance Benefit Appeals Principals and Procedures (The Guide) to cure what appears to be a longstanding prejudice against certain types of evidence.
- Maine should establish uniform standards for inclusion of agency documents in the case file and determine the weight those documents should be given under evidentiary law of the State of Maine.
- The group of officials with a stake in the state's UC program—officials from MDOL, the Unemployment Insurance (UI) Commission, and the Maine Attorney General's Office—

should resume negotiations to settle the evidentiary and practice issues identified in this analysis.

- The Maine Attorney General should identify, and MDOL and the UI Commission implement, improvements in the UC appeals process to achieve greater consistency with state law and fairness and integrity in the UC program.
- The Governor and his political appointees must ensure the UC appeals process is insulated from outside pressures that might compromise even the appearance of fairness and impartiality. The administration also must ensure hearing officers are free from actual or perceived intimidation. In particular, the administration must make clear no personnel action will be taken against hearing officers over this matter.

OPEGA notes that several of the findings and recommendations from the federal review are similar to those reported by the Unemployment Reform Blue Ribbon Commission.